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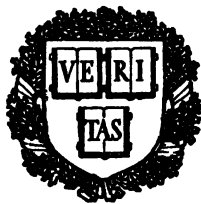
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Rhett. The right of debate. 1841

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THE
RIGHT OF DEBATE,

CONSIDERED

IN THREE LETTERS,

ADDRESSED

TO THE EDITORS OF THE NATIONAL INTELLIGENCER.

BY THE HON. R. BARNWELL RHETT.

WASHINGTON:
BLAIR AND RIVES, PRINTERS.
1841.

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LETTER I.

GENTLEMEN: In your report of the proceedings of the House of Saturday last, the 21st instant, after recording the grounds on which I asked to be excused from voting on the resolution offered by Mr. SERGEANT, proposing to take the bank bill out of the Committee of the Whole on the state of the Union, "on Monday next," you state:

"After Mr. RHETT had read his protest to the resolution, and requested that it be entered upon the record—

"Mr. DAVIS, of Kentucky, rose and asked him if he had not voted for a similar resolution to the one under consideration during the first session of the last Congress?

"[Mr. RHETT replied: No, never!]

"Mr. DAVIS rejoined: he would then read the record upon Mr. RHETT; but objection being made, Mr. D. was not allowed to do so. It is as follows:

"A motion was made by Mr. CLIFFORD that the rules in relation to the order of business be suspended, to enable him to move the following resolution: *Resolved*, That the rules of the House be so far suspended that the Committee of the Whole House on the state of the Union be discharged from the consideration of Senate bill (No. 127) entitled 'A bill to provide for the collection, safekeeping, transfer, and disbursement of the public revenue,' from and after Monday next, unless the same shall be reported at an earlier day; and that said bill, with such amendments, if any, as shall have been adopted, be taken up in the House on Tuesday next, at 10 o'clock, A. M., and be the special order until finally disposed of; reserving to said committee the right, according to the rules of the House, to report the same sooner, if the discussion shall terminate.' The question was put on Mr. CLIFFORD's motion to suspend: Yeas, 126; nays, 54. Among the yeas were Mr. RHETT and every democrat in the House. Upon the question that the House do agree to Mr. CLIFFORD's resolution: Yeas, 124; nays, 58. Among the yeas were Mr. RHETT and every democrat in the House."

Thus, gentlemen, it appears that when you profess to report the proceedings of the House, you hold yourselves at liberty to intersperse them with matters, which do not occur at the time in the House. The former opinions or conduct of those opposed to you politically may be introduced for the purpose of weakening their positions, or even for a far inferior purpose—to lower them personally in public estimation by an effort to convict them of personal inconsistency. If you had thought proper to report only what was *said* on this occasion, you might have better represented my reply to Mr. STANLY, or have noticed my request to the House to allow Mr. DAVIS to proceed. If the resolution had been read by Mr. DAVIS, it would have given me the opportunity I desired, of showing what I asserted—that I had never voted for any such resolution as that against which I protested. Since you have thought proper virtually to make this charge in your report of the proceedings of the House, I claim the privilege, through your columns, of refuting it.

In the first place, you have not quoted the whole journal. You say: "The question was put upon Mr. CLIFFORD's motion to suspend the rules." You should have added: "*Two-thirds* voting in the affirmative, the rules were suspended." From the point at which you stop, it may be inferred, by a reader unacquainted with parliamentary rules, that a mere

majority suspended the rules ; and, therefore, in this respect, that the resolutions of Mr. CLIFFORD and Mr. SERGEANT were alike. This is not so. A rule of the House, in conformity with an express standing rule existing immemorially, I believe, can only be suspended by a vote of *two-thirds* ; and on this occasion this vote was obtained.

In the second place, you say : " Amongst the yeas were Mr. RHETT and every democrat in the House." An inference from this statement might be made, that democrats *only* voted for Mr. CLIFFORD's motion to suspend the rules, and afterwards for his resolution, and that they carried those propositions. This is not so. A large number of the whigs, without whom neither the motion nor resolution could have been carried, voted for them with the democrats. Amongst them were Mr. BIDDLE, of Pennsylvania, Mr. BRIGGS and Mr. CALHOUN, of Massachusetts, Mr. UNDERWOOD, of Kentucky, Mr. CHINN, of Louisiana, Mr. JOSEPH WILLIAMS, of Tennessee, Mr. RANDOLPH, of New Jersey, and many others. If the motion or resolution had been contrary to parliamentary usage, or an infringement of the rights of the minority, these gentlemen would have been amongst the last who would have voted for or carried them.

The distinction between this resolution and the resolution of Mr. SERGEANT against which I protested—kept out of view in your report—is this : The resolution of Mr. CLIFFORD was a resolution to *suspend the rules*, which can only be carried by a vote of two-thirds of the House. Mr. SERGEANT's resolution was not of this character. By a standing rule of the House, made for the protection of the minority, (as all rules are,) and always existing as a rule of Congress, the regular course of business cannot be altered or changed but by a suspension of the rules. This regulation was made expressly to protect the minority against the caprice or tyranny of the majority. It was supposed, with this guard to their rights, requiring a co-operation of the minority itself to suspend or change the rules by a vote of two-thirds, their rights were safe—imposition or oppression by a majority was impossible.

But how is it now, with the new rule introduced at this session, for the first time, into Congress, and in pursuance of which the resolution proposed last Saturday was passed ? Was it a resolution to suspend the rules, requiring the assent of the minority, by a vote of two thirds, to make it operative ? It was a simple resolution " that, at 4 o'clock this day, (altered afterwards to Monday next,) all debate in Committee of the Whole on the bill No. 1, to incorporate the subscribers to the Fiscal Bank of the United States, shall cease," &c. It was an enforcement of a rule, which had been made a standing rule of the House, expressly ordained by the majority to get rid of the inconvenience of the *two thirds* hitherto required to suspend the rules, and empowering a mere majority to stop debate at any time in the Committee of the Whole, and force a bill through the House by the aid of the previous question. It was against this new and tyrannical rule, which was ordained expressly for the purpose of putting aside the ancient rule, in conformity to which Mr. CLIFFORD's resolution was offered last session, with my concurrence and support, that I spoke and protested. How, then, can it be said, with any propriety, that these resolutions are in any sense the same, when one was for a suspension of the rules—the other was to enforce a rule existing ? One required a vote of two-thirds of the members to carry it ; the other, a mere majority. One, in fact, was made to defeat the operation of the other, and to overthrow that protection to the minority the other

secured. On the great point to which we objected, the two resolutions, instead of being similar, are in reality antagonistical.

And look, too, gentlemen, to the circumstances under which these resolutions were introduced, containing, as they do, a most vivid exemplification of their operation and principles. The independent treasury bill—for the purpose of drawing which out of the Committee of the Whole, Mr. CLIFFORD introduced his resolution to suspend the rules—had been under debate one month and five days, consecutively; and the resolution proposed to allow three more days for continued debate. Scores of speeches had been delivered on it; and, by a computation made by a member then on the floor, two-thirds of the time taken up in the debate had been consumed by the minority opposed to the bill. It was this fair scope for free debate—the ample time and liberal indulgence given to the minority to express their opinions—that doubtless influenced those members of it who joined the majority in suspending the rules to bring the debate to a close. Now, turn to the circumstances under which the resolution on the Fiscal Bank bill was introduced last Saturday. The amendment, which was the bill on which we were to vote, containing thirty-eight pages, had been introduced into the House but the day before. The bill, yet wet from the press, is on our tables; and it is gravely proposed to take it out of the Committee of the Whole at 4 o'clock that day, and pass it. The excitement this proposition obviously produced in the House, induced the mover, I presume, as a signal specimen of whig generosity, to give one day longer; and he changed it to 4 o'clock on the Monday ensuing. The independent treasury bill contained a very trifling appropriation of money for erecting safes, vaults, &c.; but this bill established a mighty corporation, and contained an appropriation of fifteen millions of dollars. And mark how beneficial to the minority were the few hours allotted for discussing this gigantic measure, striking at the first principles of the constitution, and penetrating every corner of the land. Not a democrat was able to utter one word in the debate: not one could obtain the floor. The whole debate, short as it was, and worthless as was the opportunity, fell entirely from the lips of the majority. Who will say, under such circumstances, even if the principles on which both rested were the same, that those who voted for Mr. Clifford's resolution stand on the same platform with those who voted for the resolution of Saturday? Practically, under the former resolution, there was free, almost licentious debate. Under the latter, practically, there was an effectual gag to the minority. Neither in operation, circumstances, nor principle, then, can they, with any propriety, be said to be the same. Under the rule adopted by this Congress, the ancient security enjoyed by a minority to the right of free debate in Committee of the Whole is taken away. They have no rights in the matter. They speak but by the permission of a majority—and permission gives no right. When a majority—even of one only—says it, they may speak; and when it orders otherwise, they must be dumb. The enforcement of this rule in this case demonstrates that, if a majority choose, they may pass any measure through the House of Representatives, without one word of debate being uttered concerning it. It allowed but six days (and it may as well, on so great a measure, have allowed not one) to discuss the distribution bill, which had never before been considered in the House, and which disposed of hundreds of millions of the people's property. It allowed but five days for the consideration of the loan bill, borrowing twelve millions of dollars more. It allowed but one week for the despatch

of the first bank bill, sent us by the Senate, where it was considered one month. If such legislation was consistent with our form of government, it would be sufficient to turn away all nations from us in disgust and contempt. Against such legislation we have remonstrated. Against such tyranny by a majority, as one of the minority, I have protested.

In one of the grounds of the protest I made against this rule, I maintained that "it was a right in the people of the United States, inherited from their ancestors, and enjoyed and practised time immemorial, to speak through their Representatives to the taxes imposed upon them." The manner in which this right was enjoyed was, by referring all bills laying taxes or appropriating money to the Committee of the Whole; that is, the whole House resolves itself into a committee. The advantage is in the privileges of this committee. There, the previous question (the form of cutting off all further debate) does not apply. 'A free conference takes place, and debate is unlimited and unrestricted. On the great and vital subject of taxes, and the appropriation of them, it is not presumed that there can be too much deliberation or consideration; and those who are to pay the taxes, the people, have the right freely to discuss the manner and the extent to which they shall be laid, and the purposes to which they shall be applied. Permit me briefly to show the origin and nature of this great principle of Anglo-American liberty.

On the 18th of February, 1667, coeval with the establishment of liberty in England by the Revolution of 1668, by which James the Second was expelled from the throne, the Commons of England resolved:

"That if any motion be made in the House *for any public aid or charge upon the people*, the consideration and debate thereof ought not presently to be entered upon; but adjourned till such further day as the House shall think fit to appoint; and then it ought to be referred to the Committee of the *Whole House*; and their opinions be reported thereupon, before any resolution or vote of the House do pass therein."

Upwards of a century afterwards, in 1784, Mr. Hatsell, in his *Parliamentary Precedents*, in commenting on this rule, observes:

"The House of Commons have, with great wisdom, imposed these rules and regulations upon themselves in the exercise of that great and important privilege—'the sole and exclusive right of granting aids and supplies to the Crown;' in order (as it is their duty, when they are imposing burdens upon their fellow-subjects, to give every opportunity for free and frequent discussion) that they may not, by sudden and hasty votes, incur expenses, or be induced to approve of measures which might entail heavy and lasting burdens upon themselves and their posterity. It is upon this principle that, as long ago as the year 1667, the House laid down for a rule, 'that no motion or proposition for an aid or charge upon the people should be presently entered upon;' that, by this means, due and sufficient notice of the subject should be given, and that the members should not be surprised into a vote, but might come prepared to suggest every argument which the importance of the question may demand. Another part of the same order—'that such propositions shall receive their first discussion in Committee of the *Whole House*'—is no less wise and prudent. *There every member may speak as often as he finds it necessary*, and is not confined, in delivering his opinions, by those rules which are to be observed when speaking in the House; and which, in matters of account and computation, would be extremely inconvenient, and would necessarily deprive the House of much real and useful information. This mode of proceeding likewise gives an opportunity of a further and more mature deliberation, when the resolutions of the committee are reported; to which the House may either not only agree or disagree, but if they are of opinion that the subject has not been sufficiently canvassed, they may recommit the whole or any part of the report, for the purpose of receiving more accurate information, or more narrowly inquiring into the nature and expediency of the proposed measure. For these reasons, this resolution of the 18th of February, 1667, has been, *particularly of late years, very strictly adhered to*; and it appears to be one of those rules which, as it has its foundation in prudence, and an attention to the ease of the people, ought to be, in all instances, inviolably observed."

Here is the origin of this great rule, with the reasons for its exercise and continuance in the British Parliament to the present day. And I beg you

to remark, that, instead of its being relaxed in its administration, it has been, according to the testimony of Mr. Hatsell, *particularly of late years, very strictly adhered to*. The reason is obvious. In proportion as the British Government has become more free, and the interests of the people more regarded in its legislation, in the same proportion has this great principle of parliamentary law, introduced by the people for their protection and self-government, been more sacredly observed. It has become sanctioned by usage, and hallowed into a great principle of liberty; and if any Premier or King of England, at the present day, should dare violate it to one-half the extent this Congress has witnessed, it would produce a revolution as signal as that of 1668. Nor has it been confined alone to bills of supply. "The speech, messages, and other matters of great concernment are usually referred to the Committee of the Whole House." 6 Grey, 311. There the inestimable privilege of free debate is obtained, untrammelled by technical rules. There the representative of the people can speak to the taxes to be imposed upon his constituents, again and again, unchecked by the previous question. Suggestions are freely made—time for investigations given, that all the light and information which the subject admits of may be freely imparted and freely received. This is English parliamentary law, brought by our ancestors with them into all our colonial assemblies, as that rule, in the enactment of laws, above all others, the most sacred to liberty and protection of the rights of the people. It has been invariably practised on, as far as I am informed, by every State Legislature in the Union, excepting where the previous question has not been adopted as a rule of governance; and then it may be unnecessary. It has been as inviolably observed by every Congress which has sat in the United States, from the Revolution to the Congress of June, 1841. Even the Federalists of '98, disregarding as they showed themselves to be of popular rights, in the enactment of the alien and sedition laws, whilst they assailed the freedom of the press, left untouched the right of free debate in Congress. The liberty of speech to the people and their representatives was unassailed or abridged. For the first time since 1667, this rule has been set aside—not by Englishmen, or in a Monarchy—but in a Republic, by the descendants of Englishmen, claiming to be freer than they.

Free debate no longer exists in the House of Representatives of the Congress of the United States. The people, through their Representatives, have no longer the right of speaking to the taxes imposed upon them. Tyranny, in the shape of a majority, is erected in the Capitol. The new reign of terror is begun.

I have remarked, gentlemen, that whenever the guillotine, cutting off debate, has fallen on a bill, you have raised a shout of congratulation at its speedy passage. The patriotism of the deed is extolled, and the people are bid to rejoice. If you have thought upon this subject, will you be so good as to inform me how liberty can be maintained by a people, if the liberty of speech in their deliberative assemblies is destroyed? Why did Cromwell turn his Parliament out of doors? Was it not because he could not restrain their speech? Why did Napoleon introduce his *gens d'armes* into the House of Deputies? Was it not because he feared their remonstrances and appeals to the people against his meditated usurpations? Could these tyrants have made the representatives of the people dumb,—could they have silenced debate by rule,—what more could they have desired or demanded? For their purposes, perhaps, it were better such representatives

should have remained than be expelled. They both had obsequious and slavish majorities to carry out their behests. But they, unfortunately, did not live in our day, in the glorious light of our example. They did not comprehend the first great reform of a federal Congress in these United States, to gag by rule; and therefore they found it necessary to gag by the sword. And have you lived so long in the atmosphere of this Capitol as to suppose, so far as liberty is concerned, that the one form of suppressing debate is less objectionable than the other, if equally effective? Or do you imagine it to be possible that if the one is submitted to, the other, so soon as it is convenient, will not be resorted to? How have all monarchies arisen from republics? Do you know—can you imagine but two steps? First, the control of the majority; and, second, the silence and subjection of the minority. And can you conceive a more dexterous method of destroying a minority, than by destroying its use? If it is silent, what use is it? How can the abuses of a majority, or the designs of a tyrant against the liberties of the people, be exposed in a deliberative body, if the minority is gagged? Is it the want of a majority or an ambitious pretender, to lay bare before the eyes of the people, the true character of their measures; or do they not rather seek to commend them by all the arts and sophistries that mental ingenuity can devise? To do wrong is the great difficulty. To give it the appearance of right, with the powers belonging to us, is easily accomplished. To destroy or silence a minority in a popular representative Government, is to destroy liberty itself. The minority is the great check, the sole restraint on a majority; and if a majority is unrestrained, what is it but a despotism? Can there be a better definition of a despotism than unrestrained power!

And then, have you thought at all, in connexion with this subject, of the people these members of Congress, composing the minority, represent? How come they in the Capitol? They stand the embodied political power of fifty thousand people. In themselves, as men, they are comparatively nothing; but as representatives, they may wield a power "as terrible as an army with banners." When you silence them, you silence the people they represent. For what purpose were they sent here? Was it not by *speech*, and *speech only*, to endeavor to preserve the constitution—to protect the people they represent from oppression and injustice, and to promote equal liberty to all? Why should they stay, if speech is denied them? Why should the mockery of representation be preserved, when all its power, its vitality, is destroyed? Why should the people send them, merely to subserve the purposes of a majority, and give the air of authority to edicts which they are the dumb instruments of registering? With such power in a majority, exercised only as it has been when yet not three months old, the very object of representation is destroyed. The people represented by the minority do not rule themselves. They are ruled absolutely, without the poor privilege of remonstrance or complaint through their representatives, against laws passed for their governance, in their opinion unconstitutional in principle, and, if unrepealed, fatal to their liberties.

I have no doubt you have been astonished at the patience with which the minority in Congress have submitted to this state of things. I tell you, it were easier to have deluged the Hall of Representatives in blood, than to have submitted to this imposition. It was not difficult to have stopped utterly all legislation until that rule was rescinded. But, after due deliberation, it was determined to submit, at least for the time; because we believed

that the people would come to the rescue. We looked over the whole scope of the policy of the party in power—their tyrannical proceedings here—their unconstitutional and corrupt legislation for the country; and we have not doubted their speedy overthrow. Our policy, therefore, has been, with calmness and dignity to await the coming of the people—that people, whose rights through us have been invaded and insulted—to whom the constitution and the Government belong—whom we are, and whom we serve. They are sufficient for themselves; and if they are not, who can be sufficient for them? Who but the people can make the people free?

Should people and representatives both submit to such legislation, it needs no prophet to foretell the consummation. Let no man suppose that good can result from the practice of evil to those who practise it. The Almighty often scourges a nation for its offences; and he may permit the utmost criminality in the instrument of his chastisement; but, in the end, the instrument and the chastised suffer both alike. Suppose the minority in Congress so debased as to submit entirely and forever to the tyranny of the majority; and the people they represent, as abject as they, acquiesce in a mere nominal representation, mute, meek, slavish instruments for recording the mandates of a majority, hatched in whispers and engendered in caucus corners: will the matter end there? Can a pure and free majority (admitting them to be pure and free whilst practising oppression) co-exist with a debased minority? Will not the corrupters soon become corrupted—the enslavers enslaved? Do you not see that at every turn of public affairs new parties are formed, or new combinations from the old parties created? And how long do you think that a corrupt majority, under the continual shifting of parties, will remain so? Do men depraved adhere to principle, and avoid power? Will they not seize upon the differences of the majority to elevate themselves? And when the power of the State is in their hands, how will it be—how must it necessarily be used? Self-respect will be gone. Respect and reverence for the people will be gone. With the absence of representative responsibility, (destroyed in the uselessness of representation,) all moral responsibility will be merged in numbers. The love of self and the lust for power will prevail. Combinations will be made to subserve the objects of each, and mutual concessions, at the expense of all principle, for mutual interests. Then, when the harvest of corruption is ripe, and universal distrust exists amidst a general depravity, a Cromwell or a Cæsar will be hailed as a deliverer. If every other maxim in government shall fail, this shall remain forever true—to be free ourselves, we must permit others to be free.

"If 'twere done when 'tis done, then 'twere well
It were done quickly."

This is the motto by which the majority in Congress have driven through their measures at the present session. But remember, these were the words of a murderer, who, whilst stealing to his fell purpose, could whisper—

"Thou sure and firm-set earth,
Hear not my steps which way they walk, for fear
The very stones prate of my whereabouts."

The constitution may be murdered at this session—murdered in your distribution bill—twice murdered in your bank bills; but the people may

yet arise, "with twenty mortal murders on their crowns, and push us from our stools." He who thinks that by multiplying wrongs, resistance to them will be weakened—that, by haste in execution, guilt can be disguised—has but the wretched morals and poor policy of a fearful robber. In a mighty country like ours, whose step is the advance or retrogression of nations; whose every deed should look to the ages of futurity—to eternity itself, so far as this world is concerned, when they are to be developed in their consequences—to suppose that such a people, with such destinies, are to be caught in a trap of accidents, or tied up by the willow withes of precipitate legislation, or gagged by rules, is too ridiculous to be even contemptible, were it not that all wickedness is to be pitied or despised. We are great, and to be made far greater—mightier than our thoughts can grasp—if true to our destinies, by weighing coolly and cautiously every act of legislation, by a faithful observance of the constitution, and by holding fast to every guarantee of liberty transmitted to us by our ancestors, or discovered in the course of our own experience. Ours will then be the greatness of justice, truth, and liberty combined.

LETTER II.

GENTLEMEN: I am perfectly at leisure, although a member of Congress, and Congress is in full session; and, to rid myself of the *ennui* of inactivity, I once more address you on the subject of the right of debate.

On last Monday, I think, the chairman of the Committee of Ways and Means, after all the business before the House had been despatched, rose and remarked, that, for the first time in the history of our Government, the House of Representatives (the only body under the constitution where the people are immediately represented) had nothing to do; and that the action of the Senate upon the measures we had sent to them was all that was necessary for Congress to adjourn. A few minutes after this announcement in the House, the same novel and extraordinary fact was proclaimed in the Senate, in a tone of triumphant approval; and the tardiness of the Senate was rebuked and condemned, when contrasted with the superior energy and efficiency of the House of Representatives in passing laws, whilst the new method of stifling and destroying debate was openly defended and justified.

You, gentlemen, have been habitually in the Senate. You have seen this body, day after day, sitting from ten o'clock in the morning till four or five in the afternoon, with a diligence and fidelity unsurpassed, and rarely equalled, in high and commanding debate, putting through the crucible of the closest analysis of reasoning, and the deepest wisdom of experience, the mighty projects of legislation which have been brought before them. In former times, the questions of a bank, the adjustment of the tariff, a distribution bill, a bankrupt bill, a funded debt, were each of them deemed subjects of such vital importance to the people as to engross the attention of

Congress for the months of a regular session. But here, in midsummer, at an extra session, all of these projects, upon which the great parties of the country have been divided, vitally affecting the constitution and the perpetuity of our system of government, are thrown upon us for legislation. I put it to you, in all candor and honor, to say whether, in a deliberative body of fifty-two Senators, three months is not a very reasonable time for the consideration of such gigantic measures? Look for a moment at the matters they involve. The bankrupt bill, it was said by its friends, would relieve five hundred thousand individuals. Supposing each of these debtors to owe but one thousand dollars, here is a bill affecting property to the amount of five hundred millions of dollars. The tariff bill imposes taxation on the people from five to ten millions of dollars. A funded debt glares out, in a time of profound peace, in the loan bill, of twelve millions of dollars. The two bank bills, affecting the property of every man, woman, and child in the Union, of their posterity for generations to come; and, last of all, the distribution bill, conveying away the whole national domain, extending to the Pacific ocean; whilst the vacuum created in the Treasury by the donation is to be supplied by duties on imports—worse than all other measures, because striking at the very vitals of our whole system of government. The six millions additional appropriations voted at this Congress to the expenditures of the year, are too insignificant to be considered particularly, when standing beside these great measures. I put it to you—I put it to any man capable of grasping their scope even in a faint degree, to answer me, whether three months, in a deliberative body of fifty-two Senators, is not a very reasonable time within which to consider and dispose of such grave matters of legislation?

If you answer in the affirmative to this question, (as I know you must,) I will, with your leave, put a second to you. If three months is a reasonable time for debate and action on these subjects, in a body of fifty-two members, how long, to do their duty, ought a body of two hundred and forty members to take, properly to consider and dispose of them? And in deciding this question, keep in mind that great distinction between the two bodies. The Senate represents the States; the House represents the people, upon whom these projects of legislation, affecting their property and liberties, are immediately to act. Shall the people, through their representatives, have a less scope for debate, than is permitted to Senators who represent the States? Ought they not, from the greater number of their representatives, and their more immediate interest in the matters involved, to have far more time? Yet, see, gentlemen, whilst the representatives of the people are hanging about the lobbies of the Senate, or sitting under the trees of the garden, or sauntering down Pennsylvania avenue, the flag is flying over the dome of the Senate chamber. The House of Representatives nothing to do, whilst Congress is in full session!! Does this fact not startle you? Although you might be ignorant of the rules of debate, and the parliamentary jargon which makes it so unintelligible to those unused to the proceedings of deliberative bodies, does not this fact tell you, louder than the voice of artillery, that a revolution is effected in the popular branch of Congress—that the right of debate no longer belongs to it? Why, as far back as the days of the Great Charter, the barons of England enforced upon John the principle, that “no man should be deprived of his life, liberty, or property, but by the judgment of his peers and the law of the land.” Our

peers, you know, are the jury of the country; the law of the land is the common law, which secures to every man, where life, liberty, or property is at stake, the right of freely speaking to the matters brought against him. This is the right of the individual, handed down to us from centuries, and stamped into our whole civil polity. Answer me. Shall the people aggregately be deprived of a right, which they all have individually? Shall the right of speech, which every man enjoys in all private causes, be taken from the people in their public deliberative assemblies? Have not the people property—have they not liberty, which is all of all their political existence which is worth living for? And why, when the one is to be taken from them by their Government, in countless millions—and the other is threatened with an utter overthrow, shall they not speak, and speak freely, through their representatives, to the measures thus vitally affecting them? To argue that the right of speech is good for the individual, but not for the people, is the impudent nonsense of tyranny. To be consistent, let it go against the freedom of speech altogether. Say it is useless or dangerous in the people's legislative assemblies, and equally futile and vicious in our courts of justice. Abolish it everywhere—annihilate the trial by jury—shut up our halls of legislation, and let the silence of despotism settle over the land, (as it now reigns over the magnificent hall in which I am writing,) and a monarch's voice alone be heard "in the vast profound." It seems a strange paradox, yet it is true—that men and parties often respect the individual, whilst they despise the mass.

I perceive, gentlemen, in some of your editorials, that, in commenting, in terms of commendation, on the admirable despatch with which business has been conducted in the House, you attribute it to the hour rule; that is, the rule adopted by the House, limiting the members to one hour in speaking on any subject; and this, you represent, is the gag of which the minority complain. Now, as you always do things with such an air of candor and truth, I must presume that you know no better when making such representations. Yet you have the privilege of the hall, as the printer of the House; you have your reporters, and you print our journals; and, one might suppose, you must have heard on the floor, or have seen in the journals you have printed, that this hour rule was incorporated into the rules of the House by the regular process of one day's notice, and two-thirds of the members voting for it; and, of course, that it was therefore carried by the votes of some of the minority. Do you not know the reason which induced a portion of the minority to vote for this rule, and carry it? I will tell you. With the rule you had *previously* adopted, giving to the majority the power of stopping debate at any time, this rule is an advantage to the minority. It multiplied the opportunities of speaking, and thus gave them some chance of saying something. What had the minority just seen? Out of the six or eight days allowed for debate on the distribution bill, a single member of the majority, the chairman of the Committee of Public Lands, had consumed two whole days to begin with, and threatened a reply at large; and with the notorious and acknowledged inferiority of tact in the minority in obtaining the floor, it was plain that, at that rate, a couple of whig orators might at any time have swallowed the whole of the time allotted to debate. Allow me, therefore, gentlemen, with all gravity, to inform you that the hour rule is not the gag of which we complain. On the contrary, that this rule is considered by the minority to be an alle-

violation of the gag ; that many of them voted for it, and, without their votes, it would not have passed. The majority, therefore, whilst they are at liberty to vaunt of it as a mighty improvement on the old-fashioned method of debate, which allowed a man to utter all his thoughts, yet they certainly should be acquitted of the responsibility of making the rule. Having thus ventured (as you seemed not to know) to tell you what the gag is not, allow me to inform you what it is. Here it is :

"Resolved, That so much of the 127th rule of this House, as in the following words, viz: 'nor shall any rule be suspended except by a vote of at least two-thirds of the members present,' be, and hereby is, so far rescinded and changed, that the House may, at any time, by a vote of a majority of the members present, suspend the rules and orders of the House for the purpose of going into Committee of the Whole on the state of the Union; and also of providing for the discharge of the committee from the consideration of any bill referred to them after acting, without debate, upon all amendments pending and that may be offered."

The innovation is in italics—the rest is the rule as it was before. There is nothing in it about limiting a member to an hour in debate. It is not a resolution to suspend the rules, which requires the vote of two-thirds to carry it. It was introduced by Mr. CALHOUN, of Massachusetts, the chairman of the Committee on the Rules ; and, on this account, by the decision of the Speaker, a majority only was required to pass it. Do you understand the meaning of the innovation ? Look again. Well, then, I will show you what it means, by transcribing, from the Journals of the House, what immediately follows the above resolution :

"Mr. STANLY then moved the following resolution :

"Resolved, That the debate in the Committee of the Whole House on the state of the Union, on the bill to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights, from and after seven o'clock this day, shall cease, unless the committee shall report the bill sooner; and that, after that hour, the committee shall vote on all amendments pending, and which may be submitted."

Here is the rule, and its practical operation. The privilege of debate in the Committee of the Whole is annihilated by the vote of a mere majority. The House is silenced ; and the bill, by the aid of the previous question, is, within a few hours, passed into a law. Do you now understand it ? If you do not, you are exactly in the predicament, after perusing it, it was probably intended to leave you. Is it the usual practice of men to do wrong openly, when it can be done covertly ? When Augustus Cæsar seized and wielded all the attributes of royalty, did he take the title of a king ? Mark the phraseology in which the rule is couched ; how totally unintelligible to the people ! Yet see its operation, immediately after its passage. Should a plain man from among the people read over this sheet, he will quickly inquire "Why did you not speak to it ? If this rule be of the character you describe, why did you not proclaim abroad to the people, from your seats, this outrage on their rights ?" We were not allowed to speak to it. The majority sprung the previous question immediately upon the rule, when introduced, and upon its enforcement afterwards. Their Speaker backed them in every decision called for, and they backed the Speaker in every appeal (several of them were taken) from his decisions ; and thus, in language unintelligible to the people, without one word of reasoning, or remonstrance, or indignant denunciation,—in silence, with the pall of darkness thrown over it,—the great right of debate was laid upon its bier.

Were it not for the commendable celerity—the business like manner—in which this deed was done, we might have gathered from the majority some

reasons for its perpetration. But, either from policy, or an abundant lack of condescension, we are left entirely in the dark as to their motives. Certainly, no where—on the floor of either branch of Congress, or in the public press of the country—has any misconduct in the minority been alleged for its justification. No factious opposition,—no premeditated delay,—has been charged to them in doing the business of the country. On the contrary, we appeal to the people—we appeal to all honorable men of all parties—to bear witness to the integrity, the dignified moderation, with which the minority have carried on their opposition to the conduct and legislation of the majority. Two reasons, and two only, I have heard, coming from the Senate Chamber, in defence of the majority for destroying the right of debate. The one is, that members of Congress speak too much and too long; and the other, that it is the *right* of the majority to *rule* the minority.

Now, I will admit, if you please, that members of Congress (indeed that all men, every where) speak too often and too long; although this fault, if fault it be, may proceed from the most earnest desire to do their duty to their constituency. What then? Will this justify a rule which takes from them the right of speaking at all? Shall the right of debate, not belonging to them only, but to the people they represent, be destroyed on account of such an abuse? Have you ever attended a court of justice, and seen there, whilst judge and jury are yawning or asleep, a prosing lawyer pouring forth, with lifeless zeal, his flat monotony in behalf of his client? Suppose a judge, from long-suffering under some such veteran inflictor, should stop him, or refuse to allow him to plead his client's cause—what would you think of him? If the jury did not rise indignantly from their seats at this arbitrary exercise of unconstitutional power, in vindication of a right inestimable to all citizens, would not impeachment and ruin be his inevitable fate? Or should a legislator propose the same thing—gag all the lawyers in the courts, because some of them are dull and prosing; and thus deprive the citizen of the power of having his cause fairly brought before the bar of justice—would he not be considered an imbecile or a knave? Long speeches to others, (to say the worse of the worst of them,) are merely *inconveniences*;—they tax the patience, or waste the time of the hearer. And are not all Governments full of inconveniences in their administration; and free Governments more full of them than all others? Shall all free Governments, therefore, be abolished, and the more simple and expeditious form of despotisms be created in their stead? Even the seditious laws had a higher plea than mere convenience for their enactment. They attempted to suppress what was wrong—what all agreed was wrong—seditious language, tending to bring the administrators of the Government into disrepute and contempt, and thus overturn the constitution and liberties of the country. But what said the people? “The line between proper and improper animadversion upon the conduct of our rulers and Government is too nice to be intrusted to any court in restraining the citizen; and the right involved—the freedom of the press—is too important to our liberties to be tampered with. The press shall be licentious rather than its freedom be abridged.” Thus the people spoke, and they crushed those who would crush their free thoughts. But here, the freedom of debate is struck down—not because it is wrong in practice; this is not yet said;—not because it has been abused by the present minority in Congress; this is not pretended;—

but because it *may be inconvenient*, by producing some delay, or adding something to the expenses of Congress. This is the whole pretext for innovating on the right of debate. And who shall say that any speech, delivered in Congress, however distasteful to the hearers, is useless to the people? Speeches in Congress, is the method employed, not only of enlightening the subject before the House, but also of accounting on the part of the Representative to the people. Although a speech is read by no one else, it is read by his constituency; and thus information of the transactions of Congress, and of their rights as connected with them, is carried all over the Union to the people. Is this not a benefit, far outweighing, in a free Government, all the arguments of inconvenience which may be brought against it? Suppose the impatience of fiery gentlemen worried, or a few thousands spent in protracted and tedious debate—is this not better than to yield to the spleen of hasty or imperious tempers, or lavish millions in inconsiderate legislation? And what shall compensate a free people, for the want of accountability in their agents, or a deficiency of information and attention to their affairs? Nothing. Because self government, and liberty itself, will be lost without them.

I turn to the other reason assigned for destroying the right of debate in a minority,—*that it is the right of a majority to rule a minority*. This is a grave position; and if true, it is not confined to deliberative bodies only, but extends to the Government itself—to all Republics. The minority of the people at home, as well as in their legislative assemblies, are embraced in the position.

Now, I should like one of these majority rulers, who are monarchists in principle, to inform me what right a majority has to rule a minority? Is it because they are greater in numbers—have more power? Well, if power gives the right of dominion, I suppose one man may wield it as well as many. Why, even the monarchs of Europe, when forming their Holy Alliance, put their thrones on a little wider basis than this. Even they admitted that they were trustees in some sort for the people, and therefore derived, in some measure, their authority to rule from their consent. Has the majority a right to rule a minority, from their superior wisdom and virtue? Look over the elementary treatises on Government, and you will find that this is the very position on which monarchies are supposed to rest. Some man, with more intelligence and greater virtue, rises amongst the people, and assumes, from his superior attributes, the powers of command; and his superiority is the justification of the assumption. This would be capital doctrine for some aspiring usurper over the liberties of the people, or some cringing parasite in the ante-chamber of a harem; but I thought the free winds of the Atlantic had not permitted it to reach our shores. Upon what other basis can a majority have a right to rule a minority? The truth is, a majority has no more right to rule a minority, than a minority to rule a majority. Both have a right to rule themselves; but neither has a right to rule the other. Liberty consists in self-government; and the whole object of a constitution, in a democratic Government like ours, is to accomplish this object, by putting limitations on the powers and discretion of the majority. Whatever powers the majority possess in such a Government, they do not acquire them by any inherent right in themselves, but by the express consent of the minority; and when exercised within the limitations prescribed, they are the acts of

the majority and minority combined. Not power—not virtue—not wisdom—gives the *right* to rule; but consent—free consent. And it does *not* matter what the form of the Government is; any right to rule, asserted on any other principle, whether exercised by many, or by one man, is a sheer despotism. The consent of the governed, not the attributes of the governor—the free will of all, not the arbitrary volition of a part of the people—constitute the broad, eternal basis of American liberty. I look with dismay into futurity, when I hear from men highest in the confidence of the people, principles asserted, which betray a lamentable ignorance of our institutions, or a settled purpose to overthrow them. Is it our destiny, in a republic, ever to learn, and never to know? and can a republic long endure, when practically administered on the principles of a despotism?

Apply these positions to deliberative assemblies of the people. The object of rules for their governance in legislating, is the same as that of written constitutions for their government generally—self-government for the minority as well as the majority; and protection from the power of a majority, in matters affecting their rights and liberties. Hence the limitation in the constitution of the United States, that no law shall be passed by Congress “abridging the freedom of speech;” and in pursuance of this limitation, the parliamentary rule of 1767, universally practised on in all the deliberative assemblies in the Union, and especially in Congress—that a minority shall speak freely, and debate at large, in Committee of the Whole, on all the matters affecting the essential rights and liberties of the people; and especially when their money is to be appropriated, or taxes are to be imposed upon them. Within these limitations, and all other limitations fairly made for the protection (not the oppression) of the minority, the acts of the majority are the acts of the minority; because the minority are a party to the constitution and rules by which they are performed. Under such limitations, the business of the British empire in Parliament, since 1667, and of this country, from the dawn of the Revolution to the present session of Congress, in war and peace, and under all changes of administrations, have been carried on. But when, instead of protection to a minority, or the promotion of the freedom of speech in Congress, rules are adopted by a majority which not only deny the right, but actually prohibit to the minority the practice of free debate in Congress, it is tyranny. No consent, express or implied, can be pleaded in justification; and, practically, the minority are laboring under a despotism. They have acquiesced at this session to the imposition; but, I trust in God, you have seen the last Congress assembled in which a minority will submit to such an outrage on their rights, and the rights of the people they represent. The object of temporary submission is accomplished. The majority have shown the people, by their use of their power, how worthy they are of possessing it. To the minority is now left the more congenial task of restoring to Congress the lost liberty of debate. In their persons it has been overthrown. By them it should be vindicated; and if consequences occur inconsistent with that order and dignity which should always characterize an American Congress, on the aggressors—on the oppressors be the responsibility. The people shall judge the right; and we know that their sympathies will ever be for freedom; their detestation, their abhorrence, their withering condemnation, will follow oppression. Liberty has ever been the result of conflict; and to keep it, all the higher faculties of our nature—

courage and constancy, vigilance and self-devotion—must be put in continual requisition. The universal tendency is, to acquiescence in abuses ; and from acquiescence, in a free Government, the slide is inevitable to despotism.

As I am, under present circumstances, in favor of the operation of the hour rule, although it does put a full and an empty head, a man of sense and a dolt, on the same footing in debate, I will for the present conclude ; but you may hear from me again on a point, in the legislative tyranny of the majority this session, to which I have merely adverted—*the new powers and conduct of the Committee on Rules.*

LETTER III.

SEPTEMBER 16, 1841.

GENTLEMEN : Since my last letter to you, the special committee appointed to revise and amend the rules, on the last hour of the last business day of the session, made a general report to the House. I have, of course, no right to suppose that the intimation contained in my last letter to review their conduct could, in any manner, influence their predetermined course ; but their report will influence mine. This report, I suppose, destroys their existence, although, from the construction put by the majority of the House upon the resolution appointing their duties, their existence might be perpetual. Yet I do not expect, under the indications of popular opinion which will meet us at the next session of Congress, that such a pretension will be made. The committee, therefore, I suppose, has expired. I am not disposed to war with the dead. Although late, and after subserving the party purposes of the session, it has at length done its duty. Much which I had intended to say, I will therefore omit, and will only touch very briefly on the new character of its organization and conduct during the session.

The report last made, was, of course, not read in the House, but ordered to be printed. I have looked over it, in the hands of the Clerk of the House, and, with the exception of the innovation previously introduced during the session, to suit the purposes of the majority, they vary but little substantially from the rules of the former Congress. The alterations are chiefly verbal ; and all of them, I suppose, could have been despatched at one sitting. The report clearly shows that the delay of the committee in reporting, under the repeated calls of members of the House, did not proceed from the magnitude of the task they had to perform, but that they designedly held themselves back in reserve, to change or modify the rules from time to time, as their party should require ; and thus keep the minority perpetually in the power of the majority. This was the object of the resolution appointing their duties, passed on the 16th June, in the following words :

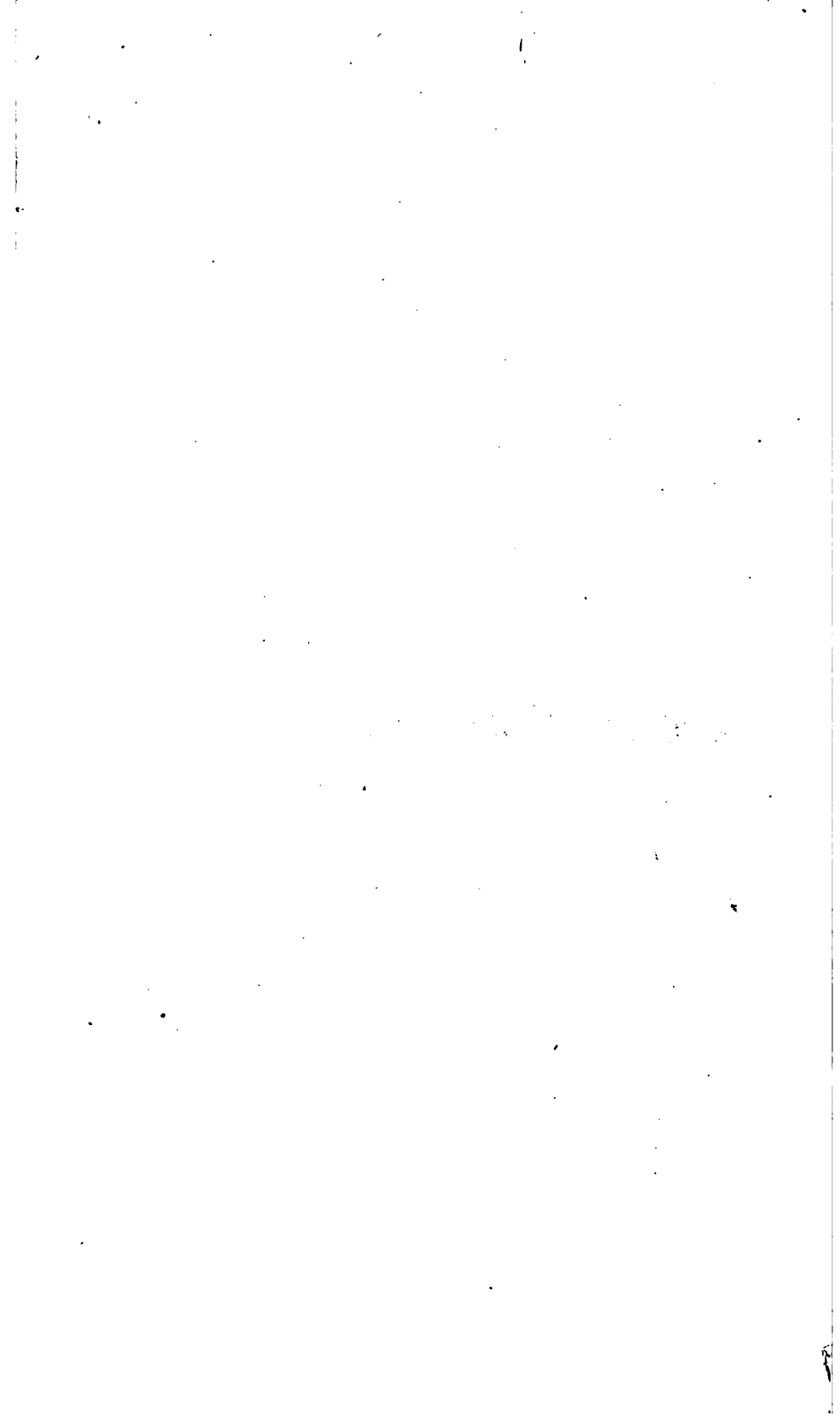
“Resolved, That all the rules and orders of the last House of Representatives not superseded by any rule or resolution adopted at the previous session, now in force, be, and the same are hereby adopted for the regulation of the House at the present session ; and that the select committee upon the rules, heretofore raised, proceed to revise and amend the rules hereby adopted, and that they have leave to report at all times.”

As the duty imposed on the committee by this resolution was to "proceed to revise and amend *the rules* hereby adopted," it would seem to be a correct inference that they should not "revise and amend" one rule, and then another, and report separately, separate amendments; but that they should "~~revise and amend the rules,~~" *all* of them, and report on all of them. This was meaning the republican party attached to the resolution; but they soon found that (with that insidiousness and indirection which has characterized all the movements of the majority on this subject) the resolution was capable of another construction, very easily learned by the Speaker. In consequence of the words at the end of the resolution, "and that they have leave to report at all times," the Speaker ruled that the committee could report piecemeal, on every rule separately, and report when they pleased, and as often as they pleased. And he ruled further, (and was sustained of course by the majority on an appeal,) that the amendments of this committee neither required one day's notice to introduce them, nor two-thirds to carry them; a mere majority was sufficient to make them laws. Here, then, was organized a power in this pliant committee, to alter, change, or abolish the rules at pleasure, by the predominant majority. On three distinct occasions, as it suited the purposes of the majority, this committee put forth particular amendments, to control the business of the House, and silence the minority. The requisition of two thirds to alter or amend a rule, contained in the general rules of the preceding Congress, adopted by the resolution, was thus put aside, so far as the majority was concerned, whilst it remained in full force to control the minority, without affording them any protection. The very object of all rules—uniformity, unchangeability—was, by this cunning arrangement, utterly destroyed.

I need not, I suppose, inform you, gentlemen, that this "*corps de reserve*," in the shape of a committee, with power "to report at all times," is unknown in parliamentary law. The law of Parliament, old as centuries, and practised in every Legislature in the Union, and adopted in fact by the present Congress, in adopting the rules of the last Congress, by the very resolution which was construed to violate it, is, that "a report being made, the committee is dissolved, and can act no more without new power. But it may be revived by a vote, and the same matter be recommitted to them. 4th Grey, 361, Jefferson's Manual." The object of creating a committee, and referring any matter to them, is, that information might be collected and arranged by them for the use and direction of the House. Until this information is obtained, they ought not to report; but if they report, they should report on the whole subject committed to them; and then they are dissolved. If allowed to make many reports on parts of the subject only, at different times, the House might be compelled to act on parts, and not on the whole of the subject; and thus be put to great disadvantage in legislating. This is all very well understood in Congress. But the truth is, law, precedent, or right, carried very little weight with the majority which domineered in its councils. Reckless alike of the fatal example such licentious legislation might create, and the tyranny they practised—which all evil and ill-regulated minds will be so prone to imitate in after times—they appeared to judge that the best method of retaining power was to abuse it; whilst that profound contempt for the people, which has ever characterized the federal party when in power, gave a loose rein to their invincible propensity to oppression. It is the veriest simplicity to expect any other course from such a party. Those who can never see any limit-

ations in the constitution, to their projects of partial legislation or general plunder, will scarcely endure the restriction of rules which recognise rights in a minority they may not control. They can see no sense in that philosophy which fears the responsibility of power. They cannot comprehend, in one usurpation, the deep necessity which drags on another, until to do wrong, knowingly and habitually, may be, to the miserable wretch who practises it, patriotic. It is possible that submission may only foster, resistance may only harden, the propensity to evil ; until, at length, we may deceive ourselves into the belief that our country is subordinate to our party, and our party to ourselves. Then, to make ourselves supreme, becomes a thing of course.

In the poor business of oppressing the minority at the session of Congress just closed, by taking away from them the right of debate, the Committee on the Rules have played their humble and allotted part. Much praise is due to them for the suppleness and promptitude with which they have acted, and the self-humiliation they have patriotically practised, in descending from the dignity of a committee of *Congress* to the low altitude of the committee of a *party*. This may be the voice of party adulation, which despises whilst it uses. But if I correctly estimate the transactions in which they have played so efficient a part, their names will hardly be remembered amongst those who pursue noble ends by noble means, and whilst serving their country, never struck, or allowed others to assail, its honor or liberties.





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